

REMARKS/ARGUMENTS

This paper is in response to the Office Action dated March 23, 2005. Claims 1 – 10 were originally pending in the application as filed. Claims 11 – 14 are presently added to the application. Thus, Claims 1 – 14 are now pending in the application.

Claims 1-4, 7 and 10 have been rejected as anticipated by U.S. Patent No. 5,884,523 to Cheng et al. (“Cheng”) and U.S. Patent No. 4,283,951 to Varpio (“Varpio”). The Office Action suggests that Cheng’s cover ring 21 and Varpio’s leveler member 4 each anticipate the substantially funnel-shaped dispenser recited in the above referenced claims. Claims 1, 2, 4, 5, 7, 8 and 10 have been rejected as anticipated by U.S. Patent No. 544,398 to Ackerman. The Office Action suggests that Ackerman’s cylindrically shaped scraper section 7 also anticipates the claimed substantially funnel-shaped dispenser. Claim 3 has been rejected as obvious based on the combination of Ackerman and U.S. Patent No. 200,149 to Newman (“Newman”). The Office Action notes that Ackerman fails to teach a substantially conical dispenser portion and, thus, relies on the funnel disclosed in Newman to cure this deficiency. Applicant notes with appreciation the Examiner’s suggestion that Claims 6 and 9 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Rejections Under 35 U.S.C. § 102

Claims 1-4, 7 and 10 have been rejected as anticipated by Cheng and Varpio. Claims 1, 2, 4, 5, 7, 8 and 10 have been rejected as anticipated by Ackerman. The invention defined by independent Claims 1 and 7 is directed to an improved apparatus for measuring and dispensing powdered products. The apparatus includes a cup portion and a funnel-shaped dispenser. The cup holds the powdered material to be measured and is sized to contain a desired volume of the powder when filled to its upper edge. The upper edge of the cup has a flat surface to accommodate leveling of the powdered ingredients. The funnel-shaped dispenser serves as a leveler and aids in accurately dispensing the measured powder. Independent Claims 1 and 7 as amended require the funnel-shaped dispenser to have a receiving opening and “an exit opening that is relatively smaller in diameter than the top opening of the cup[.]” In this regard, powdered

product may be advantageously measured in a cup having a first diameter and transferred uniformly, with relatively reduced clumping, through the funnel-shaped dispenser to a container having a receiving opening of a second relatively smaller diameter. For the reasons set forth below, it is respectfully submitted that Claims 1 – 14 as amended are patentable over the cited references.

Cheng teaches a cover ring 21 that defines an exit opening having a diameter that is equal to or greater than the diameter of its scooping cup 1. *See Cheng patent, Figure 4.* Thus, the cover ring 21 taught by Cheng is incapable of transferring powdered product from its scooping cup 1 to a container having a receiving opening of a second relatively smaller diameter. Further, the Cheng cover ring 21 teaches a cylindrical design that encourages clumping during transfer of the powdered product rather than the claimed funnel-shaped design that encourages a relatively more uniform transfer of the powdered product.

Varpio teaches a leveler member 4 having a cylindrical exterior surface and an interior surface that slopes outwardly between the receiving opening and the exit opening of the leveler member 4. *See Varpio patent, Figure 2.* Thus, Varpio teaches away from the narrowing funnel-shaped dispenser of the present invention wherein the “exit opening ...is relatively smaller in diameter than the top opening of the cup.” The Varpio device would, thus, also be incapable of transferring powdered product from its cup portion 1 through its leveler member 4 to a container having a receiving opening that is relatively smaller in diameter than the opening of the cup portion 1.

Ackerman teaches a cylindrically-shaped scraper section 7 rather than the funnel-shaped dispenser of the present invention. *See Ackerman patent, Figures 1, 4, and 5.* Although Ackerman notes that the cylindrically-shaped scraper may be of “any desired shape” the specification goes on to clearly and unmistakably teach away from a funnel-shaped dispenser having an exit opening smaller than the top opening of the cup as presently claimed. In particular, Ackerman expressly states that “I show said scraper as being of cylindrical form, and prefer said shape for the reason that when in its normal position (seen in Fig. 2) it serves also as a funnel to enable the material to be readily fed into the measure.” Ackerman patent, column 2,

lines 92-98. Emphasis added. This disclosure suggests a scraper 7 having an exit opening that is equal in diameter or perhaps larger in diameter than the measure (i.e. cup) for readily funning powder into the measure. It certainly does not suggest, and is in fact directly opposite to, the structure of the funnel-shaped dispenser as claimed wherein the exit opening is smaller than the measuring cup for readily funneling powder out from the cup.

Rejections Under 35 U.S.C. § 103

Newman discloses a charger B and funnel A in which the funnel A does not operate to level the powdered product measured in the charger B. In fact, the Newman charger B is connected to funnel A by hinge d thereby precluding the possibility that the Newman funnel A could be used as a leveler. There is also no teaching or suggestion in Newman that the disclosed funnel A may be “concentrically abutted with the upper edge of the cup (i.e., charger B) with substantially no gap therebetween” as required by independent Claims 1 and 7. Alternatively, Newman clearly teaches a funnel A having a receiving opening that is significantly larger than the top edge of the charger B. *See* Newman, Figures 1 and 2. Newman also does not teach or suggest a dispenser or funnel having “a leveling edge” and “a dispenser handle...rigidly affixed contiguous to said leveling edge” as required by independent Claim 7.

One of ordinary skill in the art who combined Newman with the disclosure of Ackerman would be motivated to provide funnel A of Newman as a means for funneling powder into the measure 4 (i.e., cup) of Ackerman as instructed by Ackerman and not as a means for funneling powder from the measure 4 in direct opposition to the teaching of Ackerman. Thus, the combination of Newman and Ackerman would result in a funnel-shaped dispenser having its larger diameter end directed upwardly, away from the top end of the cup, for funneling powder into the cup. This structure stands in sharp contrast to the claimed funnel-shaped dispenser wherein the “exit opening ...is relatively smaller in diameter than the top opening of the cup” for transporting powder out from the cup.

Appl. No.: 10/625,313
Amdt. dated 06/23/2005
Reply to Office action of March 23, 2005

Conclusion

For these reasons it is submitted that independent Claims 1 and 7 are patentable over the cited references taken alone or in combination. Further, Claims 2 – 6, and 8 – 14, which are dependent thereon are also patentable over the cited references taken alone or in combination. Based on the above amendments and remarks, it is submitted that the application is in condition for allowance.

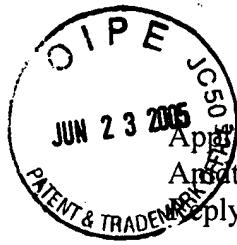
It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Brian C. Ellsworth
Registration No. 50,813

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111



Appl. No.: 10/625,313
Ans. dated 06/23/2005
Reply to Office action of March 23, 2005

"Express Mail" Mailing Label Number EV 659484061 US
Date of Deposit: June 23, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to:
MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Nancy McPartland
Nancy McPartland

CLT014717536v1